

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PHYSICIANS HEALTHSOURCE, INC.,

Plaintiff,

CASE NO. 1:12-CV-0729

v.

HON. ROBERT J. JONKER

STRYKER SALES CORPORATION,
STRYKER BIOTECH, L.L.C., STRYKER
CORPORATION, JOHN DOES 1–10, and
HOWMEDICA OSTEONICS CORP.,

Defendants.

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**ORDER PRELIMINARILY APPROVING SETTLEMENT
AND CERTIFYING SETTLEMENT CLASS**

This matter coming before the Court on the “Motion for Preliminary Approval of Class Action Settlement and Notice to the Settlement Class” (the “Motion”), after review and consideration of the Parties’ Settlement Agreement and having been fully advised in the premises, IT IS HEREBY ORDERED and adjudged as follows:

1. By stipulation of the Parties, and pursuant to Federal Rule of Civil Procedure 23(b)(3), the Court preliminarily certifies the following Settlement Class for the purposes of settlement only: “All persons who: (1) on or after four years prior to the filing of this action, (2) were subscribers of a fax number that received, (3) a fax invitation to attend a presentation for primary care physicians on advancements in orthopedics, arthritis, joint replacement, or joint treatment options, (4) received from one or more of Defendants, and (5) that did not display a proper opt-out notice.” The Parties expressly agreed to this Settlement Class definition for settlement purposes. Excluded from the

Settlement Class are Defendants, along with their parents, subsidiaries, affiliates and controlled persons, including their officers, directors, agents, servants or employees, and the immediate family members of such persons, the named counsel in this Litigation (including any member of their office or firm), persons who have previously excluded themselves from the class in this Litigation, governmental entities, and the members of the federal judiciary.

2. In the Opinion and Order dated December 11, 2013 (Dkt. 88), this Court granted Plaintiff's motion for class certification.

3. In the Opinion and Order granting class certification, the Court appointed Plaintiff, Physician's Healthsource, Inc. ("Plaintiff"), as the "Class Representative" pursuant to Rule 23(a) and appointed Brian J. Wanca of Anderson + Wanca as "Class Counsel" pursuant to Rule 23(g).

4. Pursuant to Rule 23(e), the settlement of this action, as embodied in the terms of the Settlement Agreement, is preliminarily approved. *Tennessee Ass'n of Health Maint. Organizations, Inc. v. Grier*, 262 F.3d 559, 565 (6th Cir.); *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983)

5. The Settlement Agreement is incorporated by reference into this Order (with capitalized terms as set forth in the Settlement Agreement) and is hereby preliminarily adopted as an Order of this Court, except as modified in this Order.

6. The Settlement Agreement proposes notice to the Settlement Class by facsimile, with class notice to be mailed on one occasion to class members to whom facsimile notice failed after three attempts, and by maintaining a settlement website. The Court declines to approve facsimile notice, but finds that mail notice and maintenance of a settlement website satisfies the requirements of due process and Rule 23. Apart from the facsimile notice, the plan is approved and adopted, and the Court orders that the Parties provide such notice to the Settlement Class. The Court approves the

form of the Notice attached as Exhibit A, which is based on Exhibit 2 to the Settlement Agreement. The Parties shall insert a reference to the Settlement website in Section G and the mailing address of the Settlement Administrator in Section D(3). The Court also approves Kurtzman Carson Consultants as the Settlement Administrator.

7. The Court hereby sets deadlines and dates for the acts and events set forth in the Settlement Agreement and directs the Parties to incorporate the deadlines and dates in the Class Notice:

- (a) The Notice shall be sent by the Settlement Administrator by U.S. Mail, on or before October 30, 2015;
- (b) Requests for exclusion from the Settlement shall be postmarked to the Settlement Administrator on or before January 15, 2016;
- (c) Objections and motions to intervene, including supporting memoranda, shall be filed in this Court and postmarked and served on Class Counsel and Defendants' counsel, on or before January 15, 2016; and
- (d) Claim forms shall be returned to the Settlement Administrator on or before January 15, 2016.

8. The final approval hearing, set forth in the Class Notice, is hereby scheduled for March 21, 2016 at 3:00 p.m. in Courtroom 699 at 110 Michigan St NW, Grand Rapids, MI 49503.

IT IS SO ORDERED.

Dated: October 23, 2015

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE